

**Letter of Findings Number: 10-0475P  
Corporate Income Tax-Penalty and Interest  
For the Years 2006, 2007, and 2008**

**NOTICE:** Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUES**

**I. Tax Administration–Penalty.**

**Authority:** IC § 6-3-4-4.1; IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of the ten percent negligence penalty.

**II. Tax Administration–Interest.**

**Authority:** IC § 6-8.1-10-1.

Taxpayer protests the imposition of interest on its tax liability.

**STATEMENT OF FACTS**

Taxpayer is a trust doing business in Indiana. Taxpayer is generally exempt from federal and state income tax pursuant to I.R.C. § 501(c)(9). For tax years 2006 through 2008, Taxpayer originally reported certain income as exempt from state and federal income taxation. However, after further review, Taxpayer determined that the income in question was not exempt and filed amended Indiana corporate income tax returns reflecting the revised income and tax. However, the Indiana Department of Revenue ("Department") imposed interest and penalties on the additional tax due.

Taxpayer protested the interest and penalty assessments and this Letter of Findings results. Additional facts will be supplied as necessary.

**I. Tax Administration–Negligence Penalty.**

**DISCUSSION**

Taxpayer protests the imposition of the ten percent negligence penalty imposed because of Taxpayer's failure to remit the full amount of corporate income tax on or before the due date for payment.

Penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. IC § 6-8.1-10-2.1. The Indiana Administrative Code, [45 IAC 15-11-2](#) further provides:

(b) "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(c) The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

Taxpayer has established that it acted with reasonable cause when it did not pay the full amount of tax for tax years prior to the due date for its tax payments. Therefore, Taxpayer's protest is sustained.

Taxpayer further was assessed penalties for failure to make sufficient estimated taxes pursuant to IC § 6-3-4-4.1(c). Taxpayer has provided information to conclude that the estimated tax penalties should be abated.

**FINDING**

Taxpayer's protest is sustained.

**II. Tax Administration–Interest.**

**DISCUSSION**

Taxpayer protests the imposition of interest with respect to its assessment. While Taxpayer acted reasonably with regard to its tax filing and reporting duties, the Department's legal discretion with regard to interest is constrained by statute. Under IC § 6-8.1-10-1(e), interest cannot be waived in Taxpayer's protest.

**FINDING**

Taxpayer's protest is denied.

**CONCLUSION**

Taxpayer's protest is sustained on the penalties imposed. Taxpayer's protest of interest is denied.

*Posted: 12/22/2010 by Legislative Services Agency*

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